

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION AT LAFAYETTE

IN THE MATTER OF:)
)
DANIEL G. MILLER) CASE NO. 04-41502
)
Debtor)

DECISION AND ORDER

At Fort Wayne, Indiana, on December 1, 2005.

At a hearing held on February 2, 2005, at which debtor's counsel appeared, the court sustained objections to debtor's exemptions, denied the claimed exemptions and denied the debtor the opportunity to file an amended schedule C. The order memorializing the results of this hearing was entered on February 10, 2005. On November 7, 2005, debtor's counsel filed a motion to reconsider that order. After some prompting, counsel filed a brief in support of the motion, as required by the local rules of this court. Although neither the motion nor the brief specify the precise grounds for the motion or the procedural rule upon which it might be based, since it was filed more than 10 days after the date of the court's order, it presumably has been filed pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, which is made applicable to these proceedings by Bankruptcy Rule 9024. See, Charles v. Daley, 799 F.2d 343, 347(7th Cir. 1986); Deutsch v. Burlington Northern Railway Co., 983 F.2d 741, 744 (7th Cir. 1992). As such, it is addressed to the court's discretion. See e.g., Lee v. Village of River Forest, 936 F.2d 976, 979 (7th Cir. 1991); Reinsurance Co. of America, Inc. v. Administratia Asigurarilor de Stat, 902 F.2d 1275, 1277 (7th Cir. 1990). See also, C.K.S. Engineers v. White Mountain Gypsum Co., 726 F.2d 1202, 1205 (7th Cir. 1984). Furthermore, the court may decide the issues raised by the motion without requiring a

response. See, N.D. Ind. L.B.R. B-9023-1(b). See also, Dunn v. Truck World, Inc., 929 F.2d 311, 313 (7th Cir. 1991) (discussing Rule 59).

The first requirement for a motion under Rule 60(b) is that it be timely. The motion must be filed within a reasonable time which, in some instances, cannot exceed one year. Fed. R. Civ. P. Rule 60(b). In this case, debtor's motion was filed three days shy of nine months after the court entered the order in question. Moreover, debtor's counsel attended the hearing that produced that order and, thus, was fully aware not only of the court's decision, but also of the basis for its action. Under these circumstances, especially given the debtor's complete failure to offer any explanation as to why it waited so long to file the motion, the motion is not timely and can be denied for that reason alone. Kagan v. Caterpillar Tractor Co., 795 F.2d 601, 610 (7th Cir. 1986); Friedman v. Wilson Freight Forwarding Co., 320 F.2d 244, 246-47 (3rd Cir. 1963).

Even if the motion were considered timely, it still does not fulfill the requirements of Rule 60(b). Once again, nowhere in either the motion or the supporting brief does counsel identify which portion of the rule he might be basing the request on. As near as the court can tell, the most appropriate pigeonhole would be Rule 60(b)(6), which allows the court to relieve a party from a final order for any reason other than those specified in paragraphs (b) (1)–(5). Despite the catchall nature of this particular provision, it is not broad enough to allow a party to do nothing more than reargue the original issues or to present the court with arguments that were or could have been submitted at the time it originally made its decision. Karraker v. Rent-a-Center Inc., 411 F.3d 831, 837 (7th Cir. 2005). That is all the debtor's motion attempts to do – persuade the court that for one reason or another it should not have sustained the objections to the debtor's claimed exemptions and entered the order doing so.

Debtor's motion to reconsider the court's order of February 10, 2005, is therefore DENIED.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court